

Service Date: April 6, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF SHELBY GAS)	UTILITY DIVISION
ASSOCIATION, INC., Petition for)	
Declaratory Ruling on Status as a)	DOCKET NO. D2000.1.2
Regulated Public Utility)	

DECLARATORY RULING

Discussion

On January 5, 2000, Shelby Gas Association (SGA) filed before the Public Service Commission (PSC) a Petition for Declaratory Ruling. In its petition SGA requests that the PSC declare that SGA is not a public utility within the meaning of that term as used in § 69-3-101, MCA, and therefore is not subject to PSC regulation as a public utility.

On February 22, 2000, the PSC issued a Notice of Petition for Declaratory Ruling. The notice set forth the facts and the question of law presented and provided an opportunity for all interested persons to submit comments or requests for hearing by March 23, 2000. No comments or requests for hearing have been received by the PSC.

SGA is a general cooperative association providing natural gas services to SGA members in the Shelby, Montana, service area. SGA serves only SGA members. SGA's natural gas service operations are governed by a board of directors elected by SGA members. SGA's operations are non-profit. SGA's natural gas operations have been regulated by the PSC in the past.

Cooperatives providing utility services (e.g., electricity) to their members are commonly not subject to regulation by the PSC in Montana. In regard to some cooperatives providing utility services there are specific statutory exemptions from PSC authority. *See e.g.*, § 35-18-104, MCA (electric and telephone cooperatives transacting business in accordance with Montana laws pertaining to rural cooperatives are exempt from regulation by the PSC). The PSC is aware of no specific Montana statute exempting cooperatives providing natural gas services from PSC

regulation. However, Montana case law generally supports a conclusion that associations providing utility services to members only are not public utilities subject to regulation by the PSC. *See, Lockwood Water Users Association v. Anderson*, 168 Mont. 303, 542 P.2d 1217 (1975). *Lockwood* squarely addresses the definition of public utility and cites with approval to the concept that an organization or group confining its services to its own members is not ordinarily considered a public utility. *Id.*, 542 P.2d @ 1220. In addition, the definition of public utility in Montana includes a provision that the production, delivery, or furnishing of the utility service must be for or to others. § 69-3-101(1), MCA. In the case of cooperatives, serving members only, this aspect of the definition of public utility (i.e., service to others) is normally not present.

Ruling

The Montana Public Service Commission hereby declares that Shelby Gas Association, a general cooperative association providing natural gas services to its members only and being governed by a board of directors elected by its members, is not a public utility within the meaning of that term in § 69-3-101, MCA, and therefore is not subject to PSC regulation as a public utility.

Done and dated this 28th day of March, 2000, by a vote of 4-0.

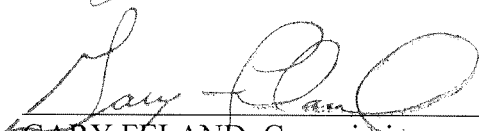
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



DAVE FISHER, Chair



NANCY MCCAFFREE, Vice Chair



GARY FELAND, Commissioner



BOB ROWE, Commissioner

ATTEST:



Kathlene M. Anderson
Commission Secretary

(SEAL)